Canada

Registered Charities Newsletter

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What is deferred giving?

Deferred giving is the process of making a gift commitment today for delivery to a charity tomorrow. Deferred giving is arranging for large donations to be made that will benefit both the interests of the charity and the personal, financial, and tax situation of the donor and the donor's family some time in the future. Deferred gifts are also known as planned gifts, such as testamentary bequests, life insurance policies, charitable remainder trusts, and gifts of residual interest.

Charities with deferred giving programs have staff and policies in place to actively seek significant gifts by attracting potential donors and by helping them with information and advice about the deferred giving process.

Deferred gifts can involve financial concerns about their value because they are not typical immediate gifts of outright cash. A charity should eventually receive a value that is at least proportionate to the tax assistance offered by the Government of Canada at the time the tax receipt was issued.

Audit of Tax Preparer Lands Registered Charities and Executive Director in Hot Water

The purpose of the case summary below is to help registered charities understand the rules under which they must operate. It provides an actual example of cases where the Canada Customs and Revenue Agency (CCRA) has acted in the public interest in sufficient detail to help registered charities understand the issues they must face and know what they can expect. Consistent with CCRA policy in providing detailed accounts of this kind, the name of the defendant was withheld. We plan to provide further examples in up-coming newsletters, and would certainly appreciate your feedback.

Mr. Jones was the executive director of three religious charities. As a result of a CCRA audit of some tax preparers and their clients, it became evident that Mr. Jones was involved in a scheme to issue tax receipts where individuals paid only a small percentage of the amounts stated on the face of the receipt. As a result, the CCRA investigation revealed an attempt to evade paying $64,458 in taxes.

Mr. Jones was accordingly charged and subsequently found guilty of attempting to evade payment of taxes by providing directly or indirectly charitable donation receipts for taxpayers to use in reporting their taxes payable, contrary to section 239(1)(d) of the *Income Tax Act*.

Purported donations were made mainly through intermediaries, and it appears that several tax preparers and others solicited contributions. The tax returns of the charities and the witnesses were filed in evidence as well as related receipts, returns and banking records. Handwriting expertise was sought. All of the supposed donors made voluntary disclosure and repayment of the unlawful discrepancy in their tax filings.

In his defense, Mr. Jones argued that to prove its case, the CCRA would have to show that he actually delivered the receipts, and that his merely signing the receipts was not enough. The defense further argued that the receipts were not false, and that Mr. Jones did not have direct knowledge of the amounts tendered in exchange for the receipts, notably when Mr. Jones's wife filled out the particulars of the tax receipts that were signed in blank by Mr. Jones.

Income Tax Regulation 3501 sets out the way a charity must prepare official donation receipts; it states that receipts must be signed by a responsible individual authorized by the charity to acknowledge donations. In this case, the charities' information returns showed that Mr. Jones was the only person authorized to sign the tax receipts. Indeed, the charities' returns were signed by Mr. Jones himself. Only Mr. Jones was involved in managing the charities, thereby raising an issue of internal control. The handwriting evidence showed that Mr. Jones had signed every receipt. Mr. Jones was therefore a responsible person for the purposes of the Act and its regulations.

The defense contended that only a charity can issue a receipt - not an individual, and that the CCRA had not shown that Mr. Jones had "issued" the receipts. This overlooks the obvious - that charities being corporate entities, can only act through individuals authorized to represent them.

On the issue of the falsity of the receipts, the features of the scheme arise repeatedly and consistently throughout the evidence, as to the dates, the amounts, and those who dealt with Mr. Jones or who "purchased" receipts from a middleman. The "purchase price" of the receipts varied according to the identity of the purchaser - a list of percentages was seized from the office of Mr. Jones As well, the receipts were not dated in sequence, but reflected random dates. The back-dating of receipts in this manner also contravenes the regulations.

The evidence would show that Mr. Jones was an active and knowing participant in issuing tax receipts for many times the amounts actually received. Indeed, Mr. Jones' guilty mind was apparent when he altered his method of operation after he became concerned about the possibility he was being investigated. He then started requiring a certified cheque for the face amount of the receipt and subsequently refunding cash, rather than simply requesting a cash percentage of the receipt's face value.

The Court also found that, in issuing false donation receipts regardless of the remoteness of his connection to the individual donors, Mr. Jones "made, participated in, assented to, or acquiesced in the making of false and deceptive statements" in the tax returns of the individual taxpayers. Indeed, this is the only possible use that false donation receipts can have.

In finding Mr. Jones guilty, the Court condemned him to perform 240 hours of community work in a period of one year, and to be confined during the same time to his home, except to attend court, for medical or religious reasons or to perform community service under the guidance of a supervisor. In addition, Mr. Jones was fined an amount of $32,229.47 Also, Mr. Jones was prohibited from dealing with the operation of any charity in a capacity as director, officer or signing officer, or from dealing with any fund-raising activities or activities involving public donations to charities.

In imposing sentence, the Court took into account, as a troubling factor, the scenario that was painted by responsible members of the community, people in responsible positions like lawyers and accountants, knowingly admitting that they participated in an illegal scheme. And to that end, the Court saw an issue of general deterrence. Another aspect, which affected the sentence, was Mr. Jones' role as a religious leader and director of three religious charities -- that someone who holds a position of moral responsibility and leadership has committed this type of an offense. This role also calls up a broader issue of trust, and that is an issue of trust to a greater community than Mr. Jones' own constituency.

In sentencing, the Court stated:

> It is important that the Court make it clear that the law of the land is what prevails, [and that Mr. Jones] as a community leader should have known what was wrong.

The three charities in question were also de-registered shortly after sentencing.

Consultation on registering organizations that provide rental housing for low-income

tenants

A consultation document on this subject now appears on our Web Site. We are considering modifying our existing guidelines to reflect the changing social environment. We invite your comments by writing to either Hélène McGraw or Trish Gorie at the Charities Directorate. You can also contact them as follows:

	Hélène McGraw	Trish Gorie
Telephone number	613-954-1188	613-946-2444
Fax number	613-946-2423	613-946-2423

Renewal in the Charities Directorate

The Charities Directorate has embraced a major renewal initiative. Funding is in place. Planning is in full swing. Consultations are under way.

Business transformations are always challenging. Like highway reconstruction, they come with heat, noise, bumps and detours to test the patience of road workers and travelers alike. But it is worth it. And so, our staff, management, partners and clients are bracing for a dynamic period of change. Our ultimate goal is to serve the Sector better than ever before, while faithfully administering the provisions of the *Income Tax Act*.

For charities renewal, there are two main arenas of activity. One is internally driven, and forms part of a major CCRA improvement initiative called "Future Directions". Under ***Future Directions: Charities (FDC)*** we will transform our business processes, upgrade our information technology, develop more effective policy statements, and ensure staff receive improved training and work tools. In a concerted drive towards excellence, the Charities Directorate hopes to become recognized for its standards in integrity, fairness, timeliness and innovation.

As part of our commitment, as set out in our new draft Vision, we will be undertaking a series of consultations with the Sector over the next several months. This will ensure the Sector has an impact on defining the ways we can serve you better. The draft Vision Statement will be available on our website in the near future.

The other arena of activity is the ***Voluntary Sector Initiative (VSI)***. VSI is the joint Government - Sector venture that spans over 22 Departments and Agencies and representatives from the voluntary sector across the country. The *Joint Regulatory Table (JRT)*, one of the forums of the VSI, is co-chaired by Bob Wyatt, Executive Director of The Muttart Foundation and by Maureen Kidd, Director General of the Charities Directorate.

The JRT mandate includes two action-items - a project to simplify the annual return (Form T3010), and a new policy on business activities run by charities. The mandate also includes researching and making recommendations to Ministers on four significant issues: accessibility and accountability, intermediate sanctions, a graduated appeals regime, and institutional reform. Table meetings began in January 2001. Its recommendations, due March 31, 2003 will continue shaping of the Directorate's renewal initiative. To learn more about the Voluntary Sector Initiative or the Joint Regulatory Table, you may wish to visit the following websites:

- www.vsr-trsb.net (Sector)
- www.pco-bcp.gc.ca/volunteer/ (Government)
- www.vsi-isbc.com (joint Sector - Government)

With both Future Directions and the Voluntary Sector Initiative, which make up our Renewal Strategy, we will seek to consult with the sector on our ideas and proposals. We are developing a plan for

consultation and would be eager to hear your views on how consultations could be best accomplished. You will find the details on how to contact us at the end of this newsletter.

Fairness and Client Rights

At the Canada Customs and Revenue Agency, fairness and the promotion of our clients' rights have long been key goals. Recently, as part of the Fairness Initiative, we formalized our commitment to enhanced fairness through ***Our Fairness Pledge.*** We also published a new declaration of client rights in our guides and publications, and have published a complete guide called ***Your Rights***. To get a copy of this guide or more information on fairness and client rights, contact your tax services office or visit our Web site at **www.cra-arc.gc.ca** on the ***Fairness and Client Rights*** page. There are seven fundamental rights: fair treatment, courtesy and consideration, privacy and confidentiality, bilingual service, information, entitlements, and formal review.

Facts about charities

We will provide general and specific statistical information about registered charities in our newsletters. For example, see the table attached to this newsletter for the total number of charities in Canada on December 31, 2000.

Did you know that from April 1, 1999, to March 31, 2000, the Charities Directorate:

- received 3,974 new applications for registration;
- registered 3,285 organizations;
- advised 885 applicants in writing that they would not qualify for registration;
- denied registration to 37 applicants;
- revoked 2,742 registered charities because they did not file their annual *Registered charity information return* (Form T3010) in the six-month period after their fiscal year end; and
- audited 419 registered charities as a result of public complaints, random selection, or based on annual information returns?

Of the 419 charities audited, we found that although most charities complied with the *Income Tax Act*, some charities showed minor misunderstandings. For example, some were confused about the rules and regulations for keeping adequate books and records. Other charities simply misinterpreted the law or the Act. We wrote educational letters to these charities and explained the requirements of the Act, and advised them how to correct their practices to avoid losing their registered status. A small number of charities sufficiently contravened the Act to warrant revocation action.

Registered charities in Canada by province and charitable category on December 31, 2000

Charity Group	National Total	AB	BC	MB	NB	NF	NS
Welfare	**14,387**	1,009	1,731	757	397	109	460
Health	**5,398**	476	763	295	163	72	252
Education	**12,715**	1,278	1,931	735	300	131	504
Religion	**31,623**	3,859	3,800	1,753	1,258	654	1,454
Benefits to Community	**11,812**	1,473	1,921	728	457	145	941
Other	**1,497**	63	1264	47	20	6	35
Total	**77,432**	**8,158**	**10,272**	**4,315**	**2,595**	**1,117**	**3,646**

Charity Group	National Total	NT	NU	ON	PE	QC	SK	YT
Welfare	**14,387**	13	8	4,655	60	4,472	699	17
Health	**5,398**	16	2	1,924	40	1,087	302	6
Education	**12,715**	27	8	4,597	74	2,545	567	18
Religion	**31,623**	51	8	11,795	234	4,522	2,185	50
Benefits to Community	**11,812**	27	4	3,460	118	1,732	783	23
Other	**1,497**	0	1	698	8	455	38	0
Total	**77,432**	**134**	**31**	**27,129**	**534**	**14,813**	**4,574**	**114**

VolNet - Getting the Voluntary Sector On-Line

Administered by Industry Canada, VolNet is part of the federal government's "Connecting Canadians" initiatives. VolNet's main objective is to increase the number of voluntary organizations connected to the Internet by offering a service package that includes: Internet access, support services, equipment, and skills development. A network of VolNet delivery agencies will provide VolNet services to charitable and not-for-profit organizations. To find out more about VolNet and the delivery agencies, call 1-800-575-9200 toll free, or visit the Web site at: **www.volnet.org**

International Year of the Volunteer

2001 is the International Year of the Volunteer. The Government of Canada has started a series of programs to promote volunteerism and recognize the contribution made by volunteers to Canadian society. Many registered charities are run and staffed by volunteers who freely give their time and efforts to their organizations, and who are committed to improving the lives of people in the communities they serve. We thank all volunteers for the invaluable work they contribute to Canadian society.

Reminder

Please remember to let us know if you relocate or move to a different address. A change of address that is not reported often results in a charity's registered status being revoked because the annual *Registered Charity and Public Information Return* (Form T3010) never reaches the charity, and the charity simply forgets to complete one. **Remember that all registered charities are required to file the required Form T3010 within six months following their fiscal year end. The *Income Tax Act* clearly states that an organization that fails to file its return will be revoked.**

Also, remember that your governing documents are now available to the general public. For this reason, and also to keep your charity file up to date, please provide us with a certified copy of any and all amendments made to your governing documents. A formal modification is necessary if you decide to change your goals and purposes, or if you change the name of your organization. This usually involves modifying your constitution or obtaining supplementary letters patent. A certified copy of a modified governing document for an unincorporated charity is a copy that has been dated and signed by two directors. In the case of an incorporated organization, a certified copy of a modified governing document is one that has been certified by the federal or provincial incorporating authority.

If you amend the objects and purposes of your organization, remember to also provide us with a detailed statement of activities explaining how you will accomplish the new purposes.

Do you need more information?

For more information on the topics in this newsletter:

Call us at:
(613) 954-0410 for local Ottawa calls (English)
(613) 954-6215 for local Ottawa calls (bilingual)
1-800-267-2384 for toll-free, long distance calls (English)
1-888-892-5667 for toll-free, long distance calls (bilingual)

Write to us at:

Charities Directorate
Canada Customs and Revenue Agency
Ottawa ON K1A 0L5

Visit our Web site at: www.ccra.gc.ca
You can view all of our previous newsletters at: **www.ccra.gc.ca/charities**

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